REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CITYLAND, INC.,
Petitioner,

-versus-

CITY OF MAKATI, represented by NELIA A. BARLIS, in her capacity as City Treasurer of Makati City,
Respondent.

CTA AC-125
Re: Appeal of Civil Case No. 11-663

Members:

BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 02 2015 3:35 p.m.

X--X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is a Petition for Review filed on November 12, 2014, seeking the reversal of the Decision dated July 7, 2014 and Resolution dated October 1, 2014 of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 11-662. The Petition came with a motion for the suspension of the tax liability.

THE PARTIES

Petitioner Cityland, Inc. (Cityland) is a stock corporation organized and existing under the laws of the Philippines, with principal place office at the 3rd

Floor, Cityland 10 Tower 1, 156 H.V. Dela Costa St., North Ayala, Makati City. It may be served with legal processes through its counsel Padilla Law Office at the 7th Floor, Padilla-De los Reyes Bldg., Juan Luna St., Manila.

The respondent is the city government of Makati City, represented by the duly-appointed City Treasurer, Nelia A. Barlis, who holds office at the Office of the City Treasurer, City Hall, J.P. Rizal Street, Makati City. Respondent may be served with legal processes at the Office of the City Attorney, 18th Floor, New Makati City Hall, Makati City.

JURISDICTIONAL FACTS

Cityland received the assailed RTC Resolution dated October 1, 2014 on October 17, 2014. The instant Petition for Review was filed on November 12, 2014, well within the thirty-day period prescribed for its filing. The instant Petition for Review was therefore timely filed.

Under Section 7 of Republic Act (R.A.) No. 9282, this Court has exclusive appellate jurisdiction to review by appeal "Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction."

This case is thus within this Court's jurisdiction.

FACTUAL AND PROCEDURAL ANTECEDENTS

The respondent, by Notice of Assessment dated February 7, 2011, assessed Cityland deficiency business taxes in the amount of ₱947,738.69 for tax years 2006, 2007 and 2008. This notice was received on February 14, 2011. The total consisted of (a) ₱504,010.20 deficiency business tax, as real estate developer; (b) ₱126,002.55 as 25% surcharge on the deficiency; and ₱317,725.94 in interest.

The Notice of Assessment states:

"February 7, 2011

CITYLAND, INC.
2/F Cityland Condo. 10,
156 HV dela Costa St., BAV
City of Makati

NOTICE OF ASSESSMENT

Sir/ Madam:

The result of the examination under Letter of Authority LA-2010 Nos. 0687 conducted pursuant to Section 171 of the Local Government Code of 1991, reveals that you are liable to pay the correct city business taxes, fees and charges, reassessed or recomputed as follows:

Deficiency Taxes, Fees and Charges - ₱947,738.69
(Covering Taxable Period: 2007-2009)

Which you may further verify from the attached assessment worksheet prepared and reassessed by CHARITO G. CHECA Revenue Examiner/Deputy who conducted the examination.

The above mentioned assessment shall become final and executory within sixty (60) days from receipt hereof, unless a tax protest is filed assailing its validity or propriety, as the case may be.

Very truly yours,

NELIA A. BARLIS
City Treasurer

Business ID#791299C
NOA #11-00025"

Neither the Notice of Assessment nor the assessment worksheet attached to it indicated the legal basis for the business tax deficiency assessed.

Cityland protested the assessment by filing a written protest dated April 15, 2011 by registered mail, which the respondent received on April 20, 2011. The City Treasurer did not act on the protest within the 60-day period prescribed by Section 195 of the Local Government Code, and was thus deemed by Cityland to have denied the protest as of June 14, 2011. On July 14, 2011, Cityland then appealed the denial of the protest before the RTC thru a petition for cancellation of tax assessment.

On August 1, 2011, Cityland filed an Amended Petition for Cancellation of Tax Assessment. In this pleading, Cityland assailed the assessment for making it appear that the firm supposedly incorrectly paid business taxes as a real estate *dealer*, when it should have done so as at the higher rate prescribed for a real estate *developer*.

Under Section 3A.02(b) of the Revised Makati Revenue Code, the business tax on a real estate dealer with domestic gross sales or receipts for the preceding calendar year of ₱2,000,000.00 or more is ₱12,000.00 plus 60% of one percent (1%) over ₱2,000,000.00.

In contrast, under Section 3A.02(g) in relation to Section 3A.02(m) of the Revised Makati Revenue Code, the business tax on a real estate dealer with domestic gross sales or receipt for the preceding calendar year of ₱2,000,000.00 or more is ₱15,000.00 plus 75% of one percent (1%) over ₱2,000,000.00.

On August 22, 2011, Branch 62 of the RTC of Makati City issued an Order giving the City of Makati five (5) days from receipt of the Order to file its comment or opposition to the petitioner's Amended Petition.

On September 20, 2011, respondent manifested through counsel that she was going to file a responsive pleading rather than a comment/opposition, within fifteen (15) days from her receipt of the Order dated August 22, 2011 on September 13, 2011.

On September 22, 2011, the RTC noted respondent's manifestation.

On September 28, 2011, respondent filed a Motion for Extension of Time, which the RTC granted on October 3, 2011. Respondent was given until October 13, 2011 to file her responsive pleading.

On October 10, 2013, respondent filed another Motion for Extension of Time, which the RTC again accommodated on October 17, 2011. Respondent was given a non-extendible period, until October 28, 2011, for the filing of her responsive pleading.

On October 28, 2011, however, respondent filed a third Motion for Extension of Time. The RTC on November 8, 2011 granted her until November 12 for the filing of her responsive pleading.

On November 9, 2011, respondent finally filed her Answer.

On November 28, 2011, Cityland filed its Reply to the respondent's Answer. In this Reply, Cityland pointed out that the respondent City Treasurer is without authority to amend Section 3A.02(m) of the Revised Makati Revenue

Code to make the business tax imposable on a real property developer rather than on the owners and operators of the business.

On December 6, 2011, Cityland moved for the setting of the case for pre-trial.

On December 21, 2011, the RTC set the case for pre-trial on February 21, 2012.

On February 8, 2012, Cityland filed its Pre-Trial Brief. Respondent filed her Pre-Trial Brief on February 17, 2012.

On February 21, 2012, the case was set for mediation on March 8, 2012.

On March 27, 2012, the RTC received the Mediator's Report indicating the parties' preference to go back to court.

On May 10, 2012, June 21, 2012, and June 26, 2012, the parties underwent Judicial Dispute Resolution proceedings. The dispute having remained unresolved, the case was forwarded to the Office of the Clerk of Court, RTC of Makati City, on August 14, 2012, for re-raffle.

The case was subsequently re-raffled to Branch 146 of the RTC of Makati City, which issued an Order dated August 22, 2012 for pre-trial to proceed on October 3, 2012.

In the Pre-Trial Order issued by the RTC on October 3, 2012, the case was set for trial on November 28, 2012 and January 28, 2013.

On November 21, 2012, Cityland filed the Judicial Affidavit of its witness, Rudy Go, its vice-president for finance since August 16, 2007.

On November 28, 2012, Cityland's witness Rudy Go underwent direct examination. The cross-examination, redirect and re-cross examination were set for January 28, 2013.

On January 28, 2013, the cross-examination of witness Rudy Go was reset to March 18, 2013, without objection from defendant's counsel.

On February 20, 2013, the hearing for March 18, 2013 was cancelled and reset to April 24, 2013.

On March 22, 2013, the hearing set for April 24, 2013 was reset to May 27, 2013.

On May 27, 2013, upon agreement of parties, the cross-examination of witness Rudy Go was reset for the last time to June 24, 2013.

On June 24, 2013, witness Rudy Go completed his testimony. Cityland was given ten (10) days to file its formal offer of documentary evidence, while the presentation of the defendant's evidence was set for August 28, 2013.

On June 26, 2013, Cityland submitted its Offer of Evidence, to which defendant filed her Comment on July 8, 2013.

On July 24, 2013, the RTC issued an Order admitting into evidence the plaintiff's Exhibits "A" to "T" and their sub-markings.

On August 23, 2013, respondent filed the Judicial Affidavit of witness Charito G. Checa, Local Treasury Operations Officer II.

On August 28, 2013, the presentation of respondent's lone witness, Charito G. Checa, was reset to November, 2013.

On November 6, 2013, the testimony of witness Charito G. Checa was terminated. The respondent was given fifteen (15) days to file her formal offer of documentary exhibits.

On November 20, 2013, respondent filed her Formal Offer of Exhibits.

On December 18, 2013, Cityland filed its Comment on respondent's formal offer of exhibits.

On January 15, 2014, the RTC admitted respondent's Exhibits "1" and "2" and their sub-markings into evidence. The parties were given thirty (30) days from receipt of the Order to file their respective memoranda, after which the case would be deemed submitted for decision.

On July 7, 2014, the RTC rendered its Decision, dismissing Cityland's Petition for lack of merit.

On October 1, 2014, the RTC, by Resolution, denied Cityland's Motion for Reconsideration and Motion for Status Quo. Cityland received this Resolution on October 17, 2014.

On November 12, 2014, Cityland filed the instant Petition for Review.

ISSUES

There is no quarrel in this case as to the factual circumstances. The dispute is over the validity of subjecting Cityland to business tax as a real estate developer (or as owner/operator of real estate developer) based on Section 3A.02(m) of the Revised Makati Revenue Code.

Petitioner alleges that the said Section 3A.02(m) is by itself invalid, being beyond the taxing powers of a city government under the Local Government Code. Petitioner further posits that respondent is barred by the principle of estoppel from changing petitioner's classification from "real estate dealer" to "real estate developer." Finally, petitioner pleads that even if it may be reclassified for local business taxation purposes as a "real estate developer," it should nonetheless be entitled to the lower tax rate for "real estate dealer."

The issues may thus be framed as follows, in the sequence in which the Court shall discuss them:

First, is respondent barred by estoppel from changing petitioner's classification from "real estate dealer" to "real estate developer"?

Second, is Section 3A.02(m) of the Revised Makati Revenue Code applicable to Cityland?

Third, is Section 3A.02(m) of the Revised Makati Revenue Code consistent with the taxation power of a city government under the Local Government Code, and therefore valid?

Fourth, is Cityland entitled to the lower tax rate for a real estate dealer, even if it may be re-classified as a real estate developer?

APPLICABLE LAWS

Applicable in resolving the instant case are pertinent provisions of the Local Government Code of 1991 (R.A. No. 7160).

Section 143 of the LGC has been held to be "the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed x x x must conform."[1] Under Section 143 of the LGC, in relation to Section 151, a city government may impose business tax on the businesses enumerated under the former. *Dealers* "in any article of commerce of whatever kind or nature" are covered under Section 143(b), while *developers* may be deemed covered by Sec. 143(h), which makes business tax imposable on "any business, not otherwise specified in the preceding paragraphs."

Section 130(b)(4), requires that the exercise of taxing powers shall not be contrary to law.[2]

Section 146 of the LGC states that "the tax on a business must be paid by the person conducting the same."

DISCUSSION

Inasmuch as an appeal throws the entire case open to review, the appellate court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[3]

Respondent Not Placed in Estoppel by Billing Assessments

The fact that the Billing Assessments issued by the Business Permits Office of Makati City to Cityland from 2000 to 2011[4] consistently assessed the corporation as a real estate dealer is not conclusive that Cityland has been immutably classed as such a dealer and may no longer be reclassified as a real estate developer. Exhibit "E" bears the stamp ""Subject to Final Inspection and Assessment", while Exhibits "J" thru "P" bear the stamp "Valid as Temporary License Subject to Verification and Inspection." Cityland cannot rely on these documents to place respondent in estoppel. The documents were for business permits, and the City Treasurer was not a signatory to any of them.

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[1] *Nursery Care Corporation, et al. vs. Anthony Acevedo, in his capacity as the Treasurer of Manila, and the City of Manila*, G.R. No. 180651, July 30, 2014.

[2] **Section 130.** *Fundamental Principles.* - The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units: x x x (b) Taxes, fees, charges and other impositions shall: x x x (4) not be contrary to law, public policy, national economic policy, or in the restraint of trade; x x x.

[3] See *Edilberto L. Barcelona vs. Dan Joel Lim and Richard Tan*, G.R. No. 189171, June 3, 2014, en banc, citing *Sociedad Europa de Financiacion, S.A. vs. Court of Appeals*, 271 Phil. 101, 110-111 (1991).

[4] Dated January 16, 2011, January 16, 2010, January 16, 2009, January 14, 2008, January 13, 2007, January 14, 2006, January 15, 2005, January 18, 2004, January 17, 2003, January 15, 2002, January 15, 2001, and January 17, 2000 (Petitioner's Exhibits "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P" respectively).

Section 3A.02(M) of the Revised Makati Revenue Code Inapplicable to Cityland.

By its very language, Section 3A.02(m) of the Revised Makati Revenue Code is limited in application to the "owners and operators of real estate developer."

Respondent would have this Court believe that the phrase "owners and operators of real estate developer" means nothing more than "real estate developer."[5] Indeed, this is the more logical and legally-sound construction that can be given to Section 3A.02(m). Unfortunately for the respondent, the phraseology adopted by the Sangguniang Panlungsod of Makati City is clear enough, giving the Court no ground to engage in interpretation.

Indeed, it is to be wondered by the Sangguniang Panlungsod of Makati City phrased Section 3A.02(m) in the manner that it did.

Under Section 143(b) of the LGC, a municipality may impose tax on the following businesses: "wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature." Note that the businesses are identified as persons. In other sub-sections of Section 143, the other businesses are similarly identified as persons, rather than as activities or transactions.[6] It is only Sec. 143(h) that, instead of identifying a person, makes business tax imposable on "any business, not otherwise specified in the preceding paragraphs." In no instance, however, is the business tax imposed on "owners or operators" of a business; rather the tax is imposed on the principal, which is the business itself.

So why did the Sangguniang Panlungsod of Makati City make the business tax imposable on "owners and operators of real estate developer"? The Court cannot engage in speculation. Courts never inquire into the wisdom of the law.[7] It is settled that courts are not concerned with the wisdom, justice,

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[5] See respondent's Answer filed on November 9, 2011, No. 11, p. 4.

[6] *I.e.*, manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, under Sec. 143(a); exporters, and manufacturers , millers, producers, wholesalers, distributors, dealers or retailers of essential commodities, under Sec. 143(c); retailers, under Sec. 143(d); contractors and other independent contractors, under Sec. 143(e); banks and other financial institutions, under Sec. 143(f); and peddlers engaged in the sale of any merchandise or article of commerce, under Sec. 143(g).

[7] *Lao C. Ichong vs. Jaime Hernandez, Secretary of Finance, and Marcelino Sarmiento, City Treasurer of Manila*, G.R. No. L-7995, May 31, 1957, *en banc*.

policy, or expediency of a statute.[8] We only step in when there is a violation of the Constitution.[9]

It is obvious, however, that by imposing the business tax on "owners and operators of real estate developer", rather than directly upon the real estate developer, the Sangguniang Panlungsod of Makati City contemplated these "owners and operators" to be entities other than the real estate developer itself. Otherwise, the tax would have simply and directly been imposed on the said developer, whoever its owners or operators happen to be.

The language of Section 3A.02(m) of the Revised Makati Revenue Code is clear and thus does not warrant interpretation. One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[10] *Verba legis non est recedendum* -- from the words of a statute there should be no departure.[11]

The court *a quo*, however, obviously engaged in interpretation. We quote from its Decision:

> "This Court is of the view that petitioner misconstrued the provisions as referring to the stockholders of the real estate developers, and ergo these stockholders should be taxed and not the developer itself. It should be borne in mind that the subject of taxation does not only refer to natural persons, but also to juridical persons. Since Cityland, Inc. is a juridical person, it is deemed the owner or operator of the said entity, which is the developer itself. From the testimony of the lone witness from the respondent, she based her classification on the basis of the registered name of petitioner, as it appeared in their system as a corporation. Hence, the person who owns the business is the corporation as such. It would be stretching too much of one's imagination to consider the stockholders of the corporation as owners thereof. x x x[12]"

The logic in the foregoing ratiocination is flawed. It is *non sequitur* that just because the scope of taxation includes juridical persons, and Cityland is a

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[8] *Jesus C. Garcia vs. Hon. Ray Alan T. Drilon, et al.*, G.R. No. 179267, June 25, 2013, *en banc*, citing *Lawyers Against Monopoly and Poverty (LAMP) vs. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 391.

[9] *Garcia vs. Drilon, supra.*

[10] *Francisco I. Chavez vs. Judicial and Bar Council, et al.*, G.R. No. 202242, July 17, 2012, *en banc*, citing *National Food Authority (NFA) vs. Masada Security Agency, Inc.*, 493 Phil. 241, 250 (2005); *Philippine National Bank vs. Garcia, Jr.*, 437 Phil. 289 (2002).

[11] *Chavez vs JBC, supra*, citing *Francisco, Jr. vs. House of Representatives*, 460 Phil. 830, 899 (2003).

[12] Decision in Civil Case No. 11-662, RTC of Makati City, Branch 146, promulgated on July 7, 2014, p. 13.

juridical person, "it is deemed the owner or operator of the said entity, which is the developer itself." There is nothing in law, or in the facts of the case, to support this finding. The testimony of the respondent's sole witness on the ownership of the real estate developer was a mere matter of belief or opinion. Under cross-examination, respondent's lone witness Charito G. Checa stated: "I believe that Cityland is the owner or the company that I am examining."[13] She admitted that she "did not bother" to determine whether Cityland has stockholders, because her concern was "to determine the correct tax due to the Cityland, Inc."[14] And the RTC hastily agreed that Ms. Checa did not bother to assess the owners "because she taxed the corporation."[15]

Unlike the RTC, the respondent herself, in contrast to her sole witness, made no effort at all to show that Cityland is an "owner and operator" of a real estate developer. What respondent did, in her Answer, was to conclude that "from the definition of 'Real Estate Developer' under Section 3A.01(xx), it is crystal clear that Petitioner Cityland, Inc. should be classified as a Real Estate Developer."[16] Respondent insisted that the business tax imposed by Sec. 3A.02(m) is squarely upon the real estate developer, and not "owners and operators". Respondent posited in her Answer:

> "10. The allegation that Petitioner Cityland, Inc. cannot be taxed under Sec. 3A.02(g) since Sec. 3A.02(m) allegedly imposes the tax towards the 'owners and operators' of the real estate developer is illogical and misleading.
>
> 11. It cannot be denied that such particular section of the Revised Makati Revenue Code [Sec. 3A.02(m)] is directed towards the Real Estate Developer itself, which has a personality separate and distinct from its stockholders, owners and operators.[17]"

Respondent's interpretation of Section 3A.02(m) cannot be sustained. It is self-contradictory. In fact, her reasoning that the personality of a real estate developer is separate from those of its owners and operators supports our view that the Sangguniang Panlungsod intended to impose the business tax not on the real estate developer *per se*, but on its owners and operators.

It is not impossible for a stock corporation like Cityland to become its own owner, if it manages to reacquire from its incorporators and all other shareholders all of the issued and fully-paid-for shares of stocks as treasury shares, except the nominal one share of stock for each director so as to enable

[13] TSN, November 6, 2013, p. 17.
[14] *Ibid.*, p. 21.
[15] *Ibid.*, p. 24.
[16] Answer filed on November 9, 2011, p. 3.
[17] *Ibid.*, p. 4.

the company -- which is an artificial being -- to conduct business. But there is nothing in the records of the case that shows this to have happened.

Cityland's shares of stock are owned by individual shareholders who are natural persons, as can readily be seen from the firm's original Articles of Incorporation, approved in 1979, and the Amended Articles of Incorporation approved by the Securities and Exchange Commission on October 7, 2010. Respondent's sole witness Charito G. Checa, who executed the assessment worksheet attached to the Notice of Assessment, even relied on Cityland's Amended Articles of Corporation, as admitted in her Judicial Affidavit filed with the RTC on August 23, 2013, as basis for classifying Cityland as a real estate developer;[18] the same Articles of Incorporation could have been used to identify the owners of Cityland's shares of stocks, as well as to establish the fact that Cityland is not its own owner.

It is undisputed that by its letter, Section 3A.02(m) of the Revised Makati Revenue Code imposes business tax "on owners or operators of real estate developer." The language of this provision is clear. The attempt of the respondent to in effect delete "owners and operators" so as to impose the tax directly on the real estate developer, runs counter to the rules of statutory construction, and would effectively amend the said provision. The respondent by herself is without authority to amend the Revised Makati Revenue Code, for that power is vested by the Local Government Code solely in the Sangguniang Panlungsod.

Basic is the rule that a corporation has a separate and distinct personality apart from its directors, officers, or owners.[19] Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[20]

The LGC does not define "owner." "Operator," however, is defined in Section 131(s) as including "the owner, manager, administrator, or any other person who operates or is responsible for the operation of a business establishment or undertaking." But again, the scant testimony of the respondent's sole witness, and the respondent's sparse documentary evidence, failed to establish that Cityland, Inc. is, in the language of Section 3A.02(m) of the Revised Makati Revenue Code, an "operator of real estate developer."

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[18] Judicial Affidavit of Charito G. Checa, pp. 6-7.

[19] *Alert Security and Investigation Agency, Inc. and/or Manuel D. Dasig vs Saidali Pasawilan, et al.*, G.R. No. 182397, September 14, 2011.

[20] *Sunio vs National Labor Relations Commission*, 212 Phil. 355, 362-363 (1984), cited in *Ever Electrical Manufacturing, Inc. vs Samahang Manggagawa ng Ever Electrical*, G.R. No. 194795, June 13, 2012.

According to the primary purpose set forth in Cityland's Articles of Incorporation (both in the 1979 original and in the 2010 Amended Articles), the corporation was formed --

> "To acquire by purchase or lease or otherwise, lands and interest in lands, and to own, hold, trade, improve, subdivide, develop and manage any real estate so acquired and to erect or cause to be erected on any land owned, held or occupied by the corporation, houses, buildings, housing projects, condominium, industrial plants, or other structures with their appurtenances, and to rebuild, enlarge, alter or improve any buildings or other structures now or hereafter erected on any land so owned, held or occupied, and to mortgage, sell, barter, lease or otherwise dispose of any agricultural, industrial, commercial and residential lands or interest in lands and buildings or other structures at any time owned or held by the corporation."

In the above-cited primary purpose, Cityland could indeed be deemed as a real estate developer. But there is nothing in the said purpose that indicates the intent to become an operator of any other real estate developer, as might make Section 3A.02(m) of the Revised Makati Revenue Code applicable to Cityland, if in fact it acted as another real estate developer's operator. There is no allegation in the records that Cityland in fact acted as such an operator.

It results, therefore, that if the respondent was correct in classifying Cityland as a real estate developer, then the Notice of Assessment should have been addressed to the "owners and operators", rather than to Cityland, because of their separate and distinct personalities. Section 3A.02(m) of the Revised Makati Revenue Code clearly imposes the liability for the business tax on the "owners and operators of real estate developer," rather than on the developer itself.

Section 3A.02(m) is Violative of Section 146 of the Local Government Code

Cityland claims that the respondent's imposition of a gross receipts tax on the stockholders of the corporation under Sec. 3A.02(m) of the 2005 Makati Tax Code (Ordinance No. 2004-A-025) exceeded the limits of the city's taxing authority under Section 143 of the Local Government Code in relation to Section 151 of the LGC.[21] Cityland is correct that the city exceeded its taxing authority, but erred in the legal basis invoked. What the city tax ordinance

[21] Petition for Review, No. 1.13, p. 3.

violated in the LGC was not Section 143 in relation to Section 151, but Section 146.

Section 146 of the LGC states that "the tax on a business must be paid by the person conducting the same." This is a statutory limitation on the taxing authority of a local government unit, such as a city. This mirrors Section 178 of the old National Internal Revenue Code (Commonwealth Act No. 466), as amended by R.A. No. 1612 (August 24, 1956), that "the tax on a business must be paid by the person, firm, or company conducting the same."

It is indeed basic that a business tax on gross sales or receipts must be levied upon the person who receives the said gross sales or receipts. In a corporation, the stockholders are not the recipients of the gross sales or receipts, but the corporation itself. In a corporation, the stockholders as owners of shares of stocks are not necessarily the ones conducting the business, particularly if such stockholders are not at the same time directors, officers or employees of the corporation; it is the corporation itself, as a juridical entity distinct from its stockholders, that conducts the business. A corporation may, however, also engage another entity to operate the business, or a segment thereof, on its behalf.

It is noteworthy that in none of her pleadings below did the respondent bother to establish that Cityland's juridical personality and that of its "owners and operators" are one and the same. Instead, the respondent postulated that the "owners and operators" clause in Section 3A.02(m) of the Revised Makati Revenue Code should be disregarded, so that the business tax may be imposed directly on the real estate developer. While we agree with the respondent that the "owners and operators" clause should be deleted – to make Section 3A.02(m) of the Revised Makati Revenue Code compliant with Section 146 of the LGC – the power to do so belongs neither to this Court nor to the respondent, but to the Sangguniang Panlungsod of Makati City.

Respondent also harped on the presumptive correctness of the assessment and presumptive validity of the ordinance.[22] The former would obviously depend upon the latter, its legal basis. This type of double presumption was frowned upon in *Collector of Internal Revenue vs. Alberto D. Benipayo*,[23] reiterated in *CIR vs. Island Garment Manufacturing Corporation and CTA*,[24] which emphasized: "The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption."

It bears repeating that by suggesting that the "owners and operators" clause in Section 3A.02(m) of the Revised Makati Revenue Code should be

[22] See Nos. 12-14, Answer filed on November 9, 2011 in Civil Case No. 11-662, p. 4.
[23] L-13656, January 31, 1962, *en banc*, 4 SCRA 182.
[24] G.R. No. L-46644, September 11, 1987.

deleted, respondent herself gave this Court serious cause to doubt the validity of the provision (as well as the assessment based thereon) which, after all, is merely presumptive and, thus, disputable.

We accordingly hold that Section 3A.02(m) of the Revised Makati Revenue Code is an *ultra vires* exercise of local taxing power. *Ultra vires* acts, or acts which are clearly beyond the scope of one's authority, are null and void and cannot be given any effect.[25] As such, Section 3A.02(m) cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute.[26]

Having determined that Section 3A.02(m) of the Revised Makati Revenue Code is inapplicable to Cityland, and that, moreover, the said Section 3A.02(m) cannot be given effect because it strays beyond the limit fixed by Section 146 of the Local Government Code, the Court sees no more need to discuss the fourth issue of whether or not Cityland may be entitled to the lower tax rate for a real estate dealer, even if it may be re-classified as a real estate developer, on the theory that "the taxpayer is entitled to treatment under a category that entails a lesser tax burden."[27]

In conclusion, the Court finds that the RTC erred in construing and applying Section 3A.02(m) of the Revised Makati Revenue Code, an error in judgment in the exercise of its discretion, which is correctable by an appeal or petition for review.[28]

The Court concludes and holds that Section 3A.02(m) of the Revised Makati Revenue Code: (1) is inapplicable to the petitioner, which has not been established to be the owner/operator of a real estate developer; and (2) is an *ultra vires* exercise of local taxing power, being in violation of Section 146 of the Local Government Code, and therefore null and void and cannot be given any effect.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. The assailed Decision dated July 7, 2014 and Resolution dated October 1, 2014 of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 11-662 are hereby **REVERSED** and **SET ASIDE**. The

[25] *Acebedo Optical Company, Inc. vs. Court of Appeals*, G.R. No. 100152, March 31, 2000, *en banc*, 385 Phil. 956, 978.
[26] See *Solicitor General, et al. vs. Metropolitan Manila Authority and Municipality of Mandaluyong* (G.R. No. 102782, December 11, 1991, en banc.
[27] Petition for Cancellation of Tax Assessment filed at the RTC on July 14, 2011, pp. 3-4.
[28] See *Isabel N. Guzman vs. Aniano N. Guzman and Primitiva G. Montealto*, G.R. No. 172588, March 13, 2013, citing *Pilipino Telephone Corporation vs. Radiomarine Network, Inc.*, G.R. No. 152092, August 4, 2010, 626 SCRA 702, at 732.

assessment levying deficiency business tax on the Petitioner, including surcharges and interests thereon, is **CANCELLED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice